

In the
United States Circuit Court
of Appeals
For the Ninth Circuit

MASENORI TANAKA,
vs.

Appellant

LUTHER WEEDIN, COMMISSIONER OF IM-
MIGRATION,

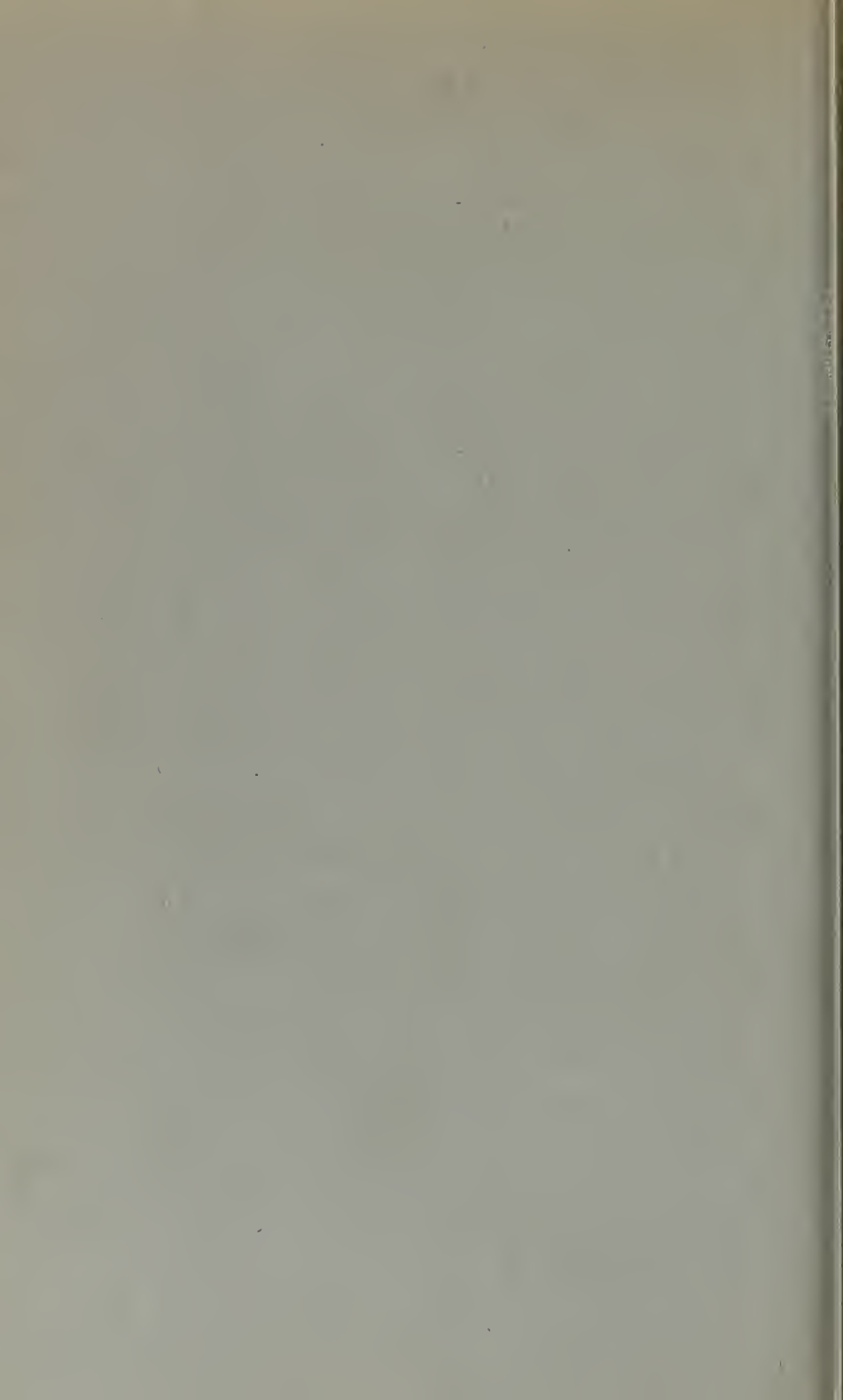
Appellee

IN THE MATTER OF THE APPLICATION OF
MASENORI TANAKA FOR A WRIT OF HA-
BEAS CORPUS

TRANSCRIPT OF RECORD

UPON APPEAL
FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHING-
TON, NORTHERN DIVISION

FILED
NOV 10 1903
U. S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON



No. —

In the
**United States Circuit Court
of Appeals**
For the Ninth Circuit

MASENORI TANAKA, *Appellant*
vs.

LUTHER WEEDIN, COMMISSIONER OF IM-
MIGRATION, *Appellee*

IN THE MATTER OF THE APPLICATION OF
MASENORI TANAKA FOR A WRIT OF HA-
BEAS CORPUS

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**In the District Court of the United States, for
the Western District of Washington, North-
ern Division.**

No. 7800

IN THE MATTER OF THE APPLICATION OF
TANAKA MASENORI, ALIAS TANAKA MASA-
TOKU, A JAPANESE ALIEN, FOR A WRIT OF
HABEAS CORPUS

vs.

LUTHER WEEDIN, COMMISSIONER OF IM-
MIGRATION AT SEATTLE

Names and Addresses of Counsel

WINTER S. MARTIN, ESQ., *Attorney for Peti-
tioner and Appellant.*

2014 L. C. Smith Building, Seattle, Washington.

THOMAS, P. REVELLE, United States Attorney,
Attorney for Respondent and Appellee,

310 Federal Building, Seattle, Washington.

DEWOLFE, EMORY, Asst. United States Attorney,
Attorney for Respondent and Appellee,

310 Federal Building, Seattle, Washington.

**United States District Court, Western District
of Washington, Northern Division**

No. 7800

IN THE MATTER OF THE APPLICATION OF
TANAKA MASENORI, ALIAS TANAKA MASA-
TOKU, A JAPANESE ALIEN, FOR A WRIT OF
HABEAS CORPUS,

vs.

LUTHER WEEDIN, COMMISSIONER OF IM-
MIGRATION AT SEATTLE

Petition for Writ of Habeas Corpus

The petition of Tanaka Masenori, alias Tanaka Masatoku, a Japanese alien, now at Seattle, within the said division and district, respectfully shows to the Court:

I.

That your petitioner is a citizen and subject of the Empire of Japan, who commenced to follow the sea as a vocation in the year 1911 on Japanese vessels. That shortly thereafter he received a Japanese seaman's book, or Kaintecho, which was fur-

nished to him by the Japanese authorities under Seaman's Act No. 47, promulgated March 8th, 1899. That for one year prior to the entry hereinafter mentioned he was employed as a duly authorized and articted seaman on board the Japanese Steamship "Africa Maru."

II.

That on October 13th, 1918, at Tacoma, Washington, the United States Immigration Officers issued an alien seaman's card to him in words and figures as follows, to-wit:

“(Page 1)

Form L. Duplicate. No. S/506 UNITED STATES
OF AMERICA.

Alien Seaman's Identification Card issued under Rule 10 of the Immigration Rules and the regulations prescribed by the President in pursuance of the Act of May 22, 1918.

Except in certain specified cases, it is unlawful for an alien seaman to land from any vessel in a United States port or to sail in a vessel from any such port unless in possession of this card, visaed incoming by an Immigrant Inspector and outgoing by a Customs Inspector.

This card will be issued in the first instance to an incoming seaman by an immigration official; to an outgoing seaman by a customs official. It will then be completed by a customs official or an immigration official, as the nature of the case requires, and thereafter will be visaed by an immigration official or a customs official upon each arrival and departure of the holder, respectively. A duplicate of every card issued will be retained in the office of the immigration official in charge at the port of entry or departure.

(See Sec. 10, Executive Order of Aug. 8, 1918, concerning passports and Rule 10, Immigration Rules.)

This card is valid for use only in American ports. The nationality of the holder as given herein is based on his statements and other evidence, but is not conclusive.

(Page 2)

Port of Tacoma, Wash. (Photograph of Masenori or Masatoku Tanaka and left thumb print next follows.)

Name. . Tanaka Masatoku. Nationality . . Japan.
Place of holder's birth . . Kodhiken, Japan. Place

of father's birth, Kochiken, Japan. Place of mother's birth, Kochiken, Japan. If naturalized abroad, where and when . . No. Age 22, on 4/27/18. Height 5 feet 3 inches. Vessel S. S. "Africa M Flag . . Japn. Date of arrival . . 3rd Oct. 1918. Description: Complexion . . Dark. Hair . . Black. Eyes . . Brown. Physical marks or peculiarities . . Mole below the left eye.

(Page 3)

Port of Tacoma, Wash. Oct. 13, 1918.

The person described on page 2 hereof has been examined by me. Having presented satisfactory evidence of his nationality and of his admissibility under the regulations, and having satisfied me that his status under Rule 10 of the Immigration Rules in Division 3, he is hereby granted permission to land in the pursuit of his calling, with the stipulation that this card must be visaed by an Immigrant Inspector on each subsequent arrival of the holder before he is permitted to leave his vessel. (Signed) A. T. Fulton, Immigrant Inspector.

The person described on page 2 hereof has been examined by me, and, having presented satisfactory evidence of his nationality and of his eligibility to depart in accordance with the regulations, he is

hereby granted permission to depart from the port above mentioned, with the stipulation that this card must be visaed by a Customs Inspector on each subsequent departure of the holder before he is permitted to sail. (No signature) Customs Inspector.

Page 4

VISAS

Subsequent Arrivals in the United States.

Port	Date	Vessel	Signature of Immigrant Inspector
------	------	--------	----------------------------------

Seattle	12/31/18	Africa Maru	Tom L. Wyckoff
---------	----------	-------------	----------------

Tacoma	1/ 8/19	"	H. Otto Gerpacher
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Subsequent Departures from the United States.

Port	Date	Vessel	Signature of Customs Inspector
------	------	--------	--------------------------------

Tacoma	1/4/19	Africa Maru	(none) "
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III.

That your petitioner upon his last voyage to the United States entered at the Port of Tacoma, Washington on January 8th as a duly articulated and lawfully authorized and employed seaman on board the said Steamship "Africa Maru."

IV.

That your petitioner upon January 13th, 1919 at the Port of Tacoma aforesaid, while still serving

as a Japanese seaman on board said Japanese steamship "Africa Maru" deserted from said ship and entered the United States.

V.

That since your petitioner's entry on January 13th, 1919, he has remained in the State of Washington continuously until he was arrested at Fairfax within said State by the United States Immigration officers on a warrant issued by the Department of Labor of the United States dated April 10th, 1923, and then and there taken into custody and thereafter to the date hereof unlawfully and illegally held and detained at the Port of Seattle by said Luther Weedin, United States Commissioner of Immigration, and the inspectors and officers under his authority and control at Seattle aforesaid. That the reasons for arrest and deportation given in the warrant were:

"That he (your petitioner) was a person likely to become a public charge at the time of entry, and that he entered in violation of Rule 11 of the Immigration Rules."

VI

That at the time of his entry at Tacoma on January 13th, 1919, your petitioner was in good and sound bodily health, and was not then and there suffering from any disease which would deny him entry into the United States. That at the time of his said entry aforesaid he was employed in the service of the said steamship as a seaman; that he was not destitute, nor without money, nor was he likely to become a public charge, and at no time prior to his entry was he examined by the Immigration officers, to determine whether he was likely to become a public charge, or whether he was capable of sustaining himself, while temporarily ashore in the United States as a seaman. That in truth and in fact your petitioner's status as a lawfully articulated and employed Japanese seaman on board said ship was accepted by the United States Immigration authorities at the Port of Tacoma without question or inquiry. That in truth and in fact at the time of his entry he had been classified as a Japanese seaman and had upon board said ship in the custody of the master or purser his Japanese seaman's card, in which the United States Immigration officials had theretofore on October 13th,

1918, classified him as a seaman. That in truth and in fact your petitioner was not a Japanese laborer, nor did he enter the United States in violation of Rule 11 of the Immigration Rules, nor did he at any time come under the operation or jurisdiction of said Rule 11, and the authority conferred upon the Immigration officers thereunder, but on the contrary your petitioner was a duly articulated and authorized Japanese seaman, whose status as such at and prior to the time of his entry on January 13th, 1919, had been accepted by the United States Immigration authorities.

VII

That notwithstanding that your petitioner deserted his ship and entered the United States without permission of the Immigration officers at Tacoma aforesaid, your petitioner had remained continuously in the State of Washington in said United States from the date of his said entry January 13, 1919 to the 10th day of April, 1923 which term was more than three years from the date of his original entry. That by reason of the premises your petitioner as he verily believes came and now comes under the operation of Section 34 of the Immigra-

tion Act of February 5th, 1917, which is as follows, to-wit:

“That any alien seaman who shall land in a port of the United States contrary to the provisions of this act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this act as provided in section twenty of this act.”

VIII

That your petitioner is a person of good moral character, who has properly conducted himself while in the United States and is not subject to deportation for any of the causes in the Immigration Act. That there is no foundation in fact for the alleged charges in the warrant that your petitioner is or ever was likely to become a public charge, or that he was a Japanese laborer entered in violation of said Rule 11, but upon the contrary said Luther Weedon, United States Commissioner of Immigra-

tion and the United States Secretary of Labor, and his officers and assistants are claiming the right to deport upon said grounds, when if the warrant were based upon the true facts, to-wit, that your petitioner was a Japanese seaman, he could not be deported, having remained in the country without molestation for a period longer than three years. That by reason of the premises your petitioner is lawfully entitled to remain in the United States. That he has established and acquired by reason of the facts a lawful domicile, which, in the present condition of the Immigration laws, permits him to remain in said United States.

IX

That your petitioner has appealed to the Secretary of Labor at Washington, D. C., for his discharge and for permission to remain in the United States upon the grounds set forth in this application for a Writ of Habeas Corpus. That your petitioner's appeal to the Secretary has been denied, and that pursuant to the order of deportation issued upon said warrant by the United States Immigration authorities, your petitioner will be deported by said Commissioner of Immigration and his subordinate officers, inspectors and assistants at the

Port of Seattle, unless your petitioner be released and discharged upon this application for a writ of habeas corpus. That pending the return of an order to show cause why the writ should not issue your petitioner is liable to deportation, unless said commissioner and his deputies and assistants are restrained and enjoined from deporting your said petitioner and from placing or attempting to place him on board ship for said purpose. That by reason of the premises your petitioner alleges that his arrest, detention and imprisonment is illegal and without authority of law. That a writ of habeas corpus should issue and your petitioner released and discharged from custody.

Wherefore your petitioner prays:

(1) That a Writ of Habeas Corpus may be issued, directed to the Honorable Luther Weedon, Commissioner of Immigration, both of Seattle, within said division and district, and that upon the return of said writ and hearing thereon, your petitioner be discharged from custody and from the said illegal restraint and unlawful arrest.

(2) That an Order to Show Cause may issue forthwith directed to the Honorable Luther Weedon and his officers, deputies and assistants, directing

(3) That pending a hearing upon the application for this writ of habeas corpus, that the said Honorable Luther Weedon, and the United States Immigration Inspectors, officers and assistants, under his authority, be restrained and enjoined from deporting your petitioner from Seattle to the Empire of Japan, or to any other place in the world and from removing your petitioner from the jurisdiction of this Court.

WINTER S. MARTIN,
Attorney for Petitioner.

UNITED STATES OF AMERICA,)
WESTERN DISTRICT OF WASHINGTON,) ss.
NORTHERN DIVISION.)

MASENORI TANAKA, being first duly sworn upon his oath, deposes and says: That he has had interpreted to him the foregoing petition for a writ of habeas corpus in the above entitled cause, knows the contents thereof, and that the statements therein contained are true.

MASENORI TANAKA.

Subscribed and sworn to before me this 10th day
of July, 1923.

(Notary Seal)

WINTER S. MARTIN,
*Notary Public in and for the
State of Washington, residing at
Seattle.*

Indorsed
Filed in the
UNITED STATES DISTRICT COURT
Western District of Washington
Northern Division
July 21, 1923.
F. M. HARSHBERGER, *Clerk.*
By F. L. CROSBY, Jr., *Deputy.*

Order to Show Cause and Restraining Order

This cause coming on to be heard upon the application of the petitioner herein for a Writ of Habeas Corpus, and the Court having read the petition and being fully advised in the premises;

IT IS BY THE COURT ORDERED that Luther Weedin, Commissioner of Immigration at the Port of Seattle, together with divers and sundry the Immigration officers, inspectors, and officials at the Port of Seattle, acting under the authority of the

United States and of said Luther Weedin at the Port of Seattle aforesaid, be and they, and each of them hereby are required to be and appear in the Court Room of the United States District Court at Seattle, Washington in the Post Office Building, on the 30th day of July, 1923, at 10 o'clock in the forenoon of said day, then and there to show cause, if any there be, why the Writ of Habeas Corpus prayed for in the petition filed herein, should not issue in accordance with the prayer of the said petition.

IT IS FURTHER ORDERED that the above named Luther Weedin, Commissioner of Immigration of the United States at the Port of Seattle aforesaid, together with his assistants, deputies, inspectors, employees in the Immigration Service of the United States at Seattle aforesaid, be, and each of them, hereby is enjoined and restrained from removing the petitioner in the above entitled cause, to-wit, one Tanaka Masenori; alias Tanaka Masatoku, from the City of Seattle, and from and out of the jurisdiction of this Court in the above division and district; and from deporting beyond or overseas from the Port of Seattle, the said petitioner in this said cause, pending the hearing and return upon the application for a Writ of Habeas Corpus filed

this day. Petitioner may be enlarged on \$1000 bond conditioned as by law required.

DONE IN OPEN COURT this 23rd day of July, 1923.

JEREMIAH NETERER,

United States District Judge.

Indorsed

Filed in the

UNITED STATES DISTRICT COURT,

Western District of Washington,

Northern Division.

July 23, 1923.

F. M. HARSHBERGER, *Clerk.*

By F. L. CROSBY, Jr., *Deputy.*

Return

To the Honorable Jeremiah Neterer, Judge of the District Court of the United States for the Western District of Washington:

NOW comes the respondent, Luther Weedin, United States Commissioner of Immigration for the District of Washington, with his office at the Port of Seattle, Washington, and for answer and return to the order to show cause entered herein, says that at the time of the service of said order to

show cause and of the petition herein, the said MASENORI or MASATOKU TANAKA was in the custody of this respondent and was held by this respondent for deportation from the United States as an alien person not entitled to admission under the laws of the United States and subject to deportation under the laws of the United States; the said MASENORI or MASATOKU TANAKA having been theretofore arrested and detained by this respondent under a warrant of arrest issued by the Secretary of Labor of the United States and thereafter having been ordered deported by said Secretary of Labor; said order to this respondent being in the form of a warrant of deportation dated June 25, 1923; the said warrant of deportation being in words and figures following:

“WARRANT—DEPORTATION OF ALIEN

UNITED STATES OF AMERICA

Department of Labor

Washington

No.

55225/317

“To Commissioner of Immigration, Seattle, Washington, or to any officer or employe in the U. S. Immigration Service,

“WHEREAS, from proofs submitted to me, after due hearing before Immigrant Inspector B. E. Gowen, held at Seattle, Washington, I have become satisfied that the alien

“MASENORI (or MASATOKU) TANAKA, alias Y. Nakamura, who landed at the Port of Tacoma, Washington ex SS ‘Africa Maru,’ on the 15th day of Jan. 1919, has been found in the United States in violation of the immigration act of February 5, 1917, to-wit:

“That he was a person likely to become a public charge at the time of his entry; and that he entered in violation of Rule 11 of the Immigration Rules, and may be deported in accordance therewith.

“I, ROBE CARL WHITE, Acting Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Japan the country from whence he came, at the expense of the appropriation ‘Expenses of Regulating Immigration, 1923.’ You are directed to purchase transportation from Seattle, Washington, to his home in Japan at the lowest available rate, payable from above named appropriation. The alien may be permitted to reship foreign, one way, in lieu of deportation,

and such action on his part will be considered a satisfactory compliance with the terms of this warrant. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding release bond. For so doing this shall be your sufficient warrant.

“Witness my hand and seal this 25th day of June, 1923.

“(Signed) ROBE CARL WHITE,

“Acting Secretary of Labor.

“June 27, 1923.”

Respondent hereto attaches copy of the record, order, decision and exhibits, both on the hearing before the Immigration Inspectors at Seattle, Washington, and the record of the submission of said hearing to the Secretary of Labor, which papers are hereby made a part and parcel of this return the same as if copied herein in full.

WHEREFORE, respondent prays that said writ of habeas corpus be denied.

LUTHER WEEDIN,

Commissioner of Immigration.

UNITED STATES OF AMERICA,)
WESTERN DISTRICT OF WASHINGTON,) ss.
NORTHERN DIVISION.)

Luther Weedin, being first duly sworn on oath deposes and says: That he is Commissioner of Immigration, named in the foregoing return; that he has read the said return and knows the contents thereof, and that he believes the same to be true.

LUTHER WEEDIN.

Subscribed and sworn to before me this 28th day of August, 1923.

(Notary Seal)

D. L. YOUNG.

Indorsed
Filed in the
UNITED STATES DISTRICT COURT,
Western District of Washington,
Northern Division.

August. 28, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

Hearing on Return on Order to Show Cause

Now on this 28th day of August, 1923, this matter comes up for hearing on return on order to show cause herein. Same is argued to the court by coun-

sel for both sides and petition is denied. It is ordered that deportation proceedings be stayed for the period of fifteen (15) days within which time petitioner is to present his petition for appeal and file supersedeas bond in the sum of \$1500.00 dollars, during which period defendant is ordered released on present bond.

Journal No. 11,

Page 377.

Petition for Appeal

To the Honorable Frank S. Dietrich, United States District Judge:

The above named petitioner, Masenori Tanaka, feeling himself aggrieved by the decree made and entered in the above entitled cause on the 28th day of August, A. D. 1923, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco,

California. And desiring to supersede the execution of the decree, petitioner herein tenders bond in the sum of Fifteen Hundred (\$1500) Dollars, pursuant to the order of Court heretofore made and prays that with the allowance of the appeal an order be made superseding the said decree and staying the execution thereof pending the hearing and determination of this said appeal.

WINTER S. MARTIN,
Attorney for Petitioner.

The foregoing petition granted and appeal allowed.

JEREMIAH NETERER,
United States District Judge.

Copy of within petition for appeal received and due service of same acknowledged this eighth day of September, 1923.

DeWOLFE EMORY,
Asst. U. S. Attorney.
Attorney for Plaintiff.

Indorsed
Filed in the
UNITED STATES DISTRICT COURT,
Western District of Washington,
Northern Division.
September 8, 1923.
F. M. HARSHBERGER, *Clerk.*
By S. E. LEITCH, *Deputy.*

Assignment of Errors

And now on this 8th day of September, A. D. 1923, came the petitioner, by his attorney, Winter S. Martin, and says that the decree entered in the above cause upon the 28th day of August, A. D. 1923, is erroneous and unjust to the defendant in the following particulars, to-wit:

I

That as appears by the record in the above cause your petitioner was a Japanese seaman serving on board the steamship "Africa Maru," when he deserted from his ship at Tacoma, Washington, January 4th, 1919. That he possessed at said time and had for a long time prior thereto possessed a Japanese Official's Seaman's card, fixing his status as a seaman subject of the Empire of Japan, and this status of Japanese seaman was recognized by the United States Immigration authorities in October, 1918, when they issued to him at Tacoma, Washington, a Japanese seaman's identification

card, and said card had not been revoked and was in operation and effective as an identification card fixing his status as a Japanese seaman by the United States Immigration authorities in January, 1919, when he deserted his ship as aforesaid. That by reason of the premises he was an alien seaman within the meaning of Section 34 of the Immigration Act of February 5th, 1917, with all of the amendments supplemental thereto, and as such alien seaman could not be deported after he had remained in the United States beyond the full period of three years from the time of entry. That by reason thereof the order denying his petition for a writ of habeas corpus was erroneous and unjust to him.

II

That inasmuch as the Government waived at the hearing upon the petition in the above cause any claim on the part of the Government that the defendant "was a person likely to become a public charge at the time of entry," the Court's ruling and decree that your petitioner, Masenori Tanaka, entered the United States in violation of Rule 11 of the Immigration Rules is erroneous and unwarranted in view of the positive terms of Section 34 of the Immigration Act.

III

That the Court erred in holding that there was any evidence in the record to support the finding that your petitioner entered the United States in violation of Rule 11 of the Immigration Rules.

IV

The Court erred in holding and deciding that your petitioner was a Japanese laborer who had entered the country without a passport and as such was subject to deportation at the time your petitioner's petition was denied.

V

That the Court erred further in holding and deciding that Rule 11 of the Immigration Rules of 1917 and the President's Proclamation referred to therein had any application or binding force whatsoever in view of the record facts in the above cause.

VI

The Court erred in not holding and deciding that your petitioner in the above cause was entitled to a Writ of Habeas Corpus upon the ground that he

was a duly accredited Japanese seaman, who entered the United States at Tacoma, Washington, in January, 1919, and who had continuously remained in the United States during a period of more than three years from the date of his entry and therefore his detention and ordered deportation were erroneous, illegal and without authority of law on the part of the Secretary of Labor, and by reason thereof a Writ of Habeas Corpus should issue for your petitioner's release.

VII

The Court erred in denying the Writ of Habeas Corpus in the above cause upon the facts established by the petition and the return of the United States thereto.

WHEREFORE your petitioner prays that said decree be reversed, and that a Writ of Habeas Corpus be issued in said cause releasing and discharging him from custody and from the illegal restraint complained of in the above entitled cause.

WINTER S. MARTIN,

Attorney for Petitioner.

Copy of within Assignment of Errors received and due service of the same acknowledge this

eighth day of September, 1923.

DEWOLFE EMORY,
Asst. U. S. Attorney.
Attorney for Plaintiff.

Indorsed
Filed in the
UNITED STATES DISTRICT COURT,
Western District of Washington,
Northern Division.
September 8, 1923.
F. M. HARSHBERGER, *Clerk.*
By S. E. LEITCH, *Deputy.*

Order Allowing Appeal and Fixing Supersedeas

Considering the foregoing petition this day presented, it is,

ORDERED that an appeal be allowed to Masenori Tanaka, petitioner in above cause, from the decree of the above court denying the Writ of Habeas Corpus entered on the 28th day of August, 1923, in the above entitled and numbered cause, and that said appeal shall be returnable to the Circuit Court of Appeals for the Ninth Circuit, and that, upon the execution of an appeal and supersedeas bond in

the penalty of Fifteen Hundred (\$1500.00) Dollars, said appeal shall operate as a supersedeas of said decree denying the petitioner's application for Writ of Habeas Corpus, and shall suspend the order of deportation heretofore issued by the Department of Labor ordering the United States Commissioner of Immigration at the Port of Seattle, Washington, together with the United States Immigration officers and Inspectors to deport said petitioner;

And that a transcript of record be filed in the United States Circuit Court of Appeals according to law as prayed for.

DONE IN OPEN COURT this 8th day of September, A. D. 1923, at Seattle, Washington.

JEREMIAH NETERER,

United States District Judge.

Indorsed

Filed in the

UNITED STATES DISTRICT COURT,

Western District of Washington,

Northern Division.

September 8, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

Appeal and Supersedeas Bond

KNOW ALL MEN BY THESE PRESENTS:

That we, Masenori Tanaka, as principal, and NATIONAL SURETY COMPANY, a duly authorized surety bonding corporation, as surety, acknowledge ourselves to be jointly indebted to the United States of America, appellee, in the above cause, in the sum of fifteen hundred (\$1500) dollars, conditioned that,

WHEREAS on the 28th day of August, 1923, in the District Court of the United States, for the Western District of Washington in the Northern Division thereof, in a suit depending in that Court wherein Masenori Tanaka was the petitioner for a writ of habeas corpus, and the United States by and through its Commissioner of Immigration at Seattle, Washington, was respondent, numbered on the docket of said Court as 7800, a decree was rendered denying said petitioner's application for a writ of habeas corpus; and the said Masenori Tanaka having obtained an appeal to the Circuit Court of Appeals for the Ninth Circuit, and having filed a copy thereof in the office of the Clerk of the Court

to reverse the said decree, and a citation directed to the said appellee citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco in the State of California, on the 7th day of October, A. D. 1923, next

Now if the said Masenori Tanaka shall prosecute his appeal to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

MASENORI TANAKA, *Principal.*
(Corporate Seal) NATIONAL SURETY COMPANY,
By RALPH S. STACY,
Resident Vice-President,
Surety.
J. GRANT,
Resident Assistant Secretary.

Approved this 8th day of September, A. D. 1923.

JEREMIAH NETERER,
United States District Judge.

O. K. as to form. DeWOLFE EMORY,
Asst. U. S. Attorney.

Indorsed
Filed in the
UNITED STATES DISTRICT COURT,
Western District of Washington,
Northern Division.

September 8, 1923.

F. M. HARSHBERGER, *Clerk*.

By S. E. LEITCH, *Deputy*.

**Order Enlarging Petitioner on Bail Pending
Appeal and Continuing in Force the
Restraining Order Heretofore Entered**

The petitioner in the above cause having appealed to the Circuit Court of Appeals for the Ninth Circuit, and his appeal having been allowed, and his appeal and supersedeas bond in the sum of Fifteen Hundred (\$1500.00) Dollars having been approved;

IT IS ORDERED that petitioner, Masenori Tanaka, be and he is hereby enlarged pending the final determination of his said appeal.

IT IS FURTHER ORDERED that the restraining order heretofore issued in said cause on July 23rd, 1923, directed to Hon. Luther Weedon, Commissioner of Immigration, at the Port of Seattle, and his assistants and Immigration Inspectors, etc.,

enjoining him and them from deporting or removing the petitioner from the United States or from attempting so to do during the pendency and determination of the petition for a writ of habeas corpus be and it hereby is continued in full force and effect during the pendency of this appeal and its final determination in the said Court of Appeals or Supreme Court, and said Commissioner is hereby enjoined from proceeding under his warrant from the Secretary of Labor, pending the final determination of said appeal, and this order shall stay all deportation proceedings in the Department of Labor against said petitioner pending the final determination of said appeal.

DONE IN OPEN COURT this 8th day of September, 1923.

JEREMIAH NETERER,

United States District Judge.

Copy of within order received and due service of the same acknowledged this eighth day of September, 1923.

DeWOLFE EMORY,

Asst. U. S. Attorney.

Attorney for Plaintiff.

Indorsed
Filed in the
UNITED STATES DISTRICT COURT,
Western District of Washington,
Northern Division.
September 8, 1923.
F. M. HARSHBERGER, *Clerk*.
By S. E. LEITCH, *Deputy*.

Order

Upon the application of the appellant for an order extending the time within which to perfect the appeal in the above cause, the Court having read the stipulation of the parties hereto;

IT IS BY THE COURT ORDERED that the time within which to lodge the appellate record in the office of the clerk of the Circuit Court of Appeals, and to perfect the appeal in said cause as required by law, be and the same hereby is extended for the full period of thirty days from and after the 7th day of October 1923, when the original time within which to file the appellate record in said cause expires.

DONE IN OPEN COURT this 1st day of October, A. D. 1923.

JEREMIAH NETERER, *Judge*.

O. K.
DeWOLFE EMORY,
Asst. U. S. Attorney.

Indorsed
Filed in the
UNITED STATES DISTRICT COURT,
Western District of Washington,
Northern Division.

October 4, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

**Order Transmitting Immigration Record and
Original Stipulation Waiving Cita-
tion on Appeal**

Upon the application of the petitioner for an order transmitting immigration record and original stipulation waiving citation on appeal, the Court having read the stipulation of the parties hereto consenting that the same may be done;

IT IS BY THE COURT ORDERED that the clerk of the above entitled Court transmit with the appellate record in said cause the original file and record of the Department of Labor, covering the deportation proceedings against the petitioner,

which was filed with the respondent's return in the above cause, directly to the clerk of the Circuit Court of Appeals, in order that the said original immigration file may be considered by the Circuit Court of Appeals in lieu of a certified copy of said record.

The clerk of this Court is further directed to transmit to the Clerk of the Circuit Court of Appeals in said cause the original stipulation of the parties hereto waiving the issuance and service of citation upon appeal. Said original papers to be transmitted as part of the appellate record in said cause.

DONE IN OPEN COURT this 22nd day of October, 1923.

JEREMIAH NETERER,
United States District Judge.

O. K.
DeWOLFE EMORY,
Asst. U. S. Attorney.

Indorsed
Filed in the
UNITED STATES DISTRICT COURT,
Western District of Washington,
Northern Division.

October 22, 1923.

F. M. HARSHBERGER, *Clerk.*
By S. E. LEITCH, *Deputy.*

Stipulation Re the Contents of Appellate Record

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties hereto that the transcript of record on appeal shall consist of the following papers, and that no others need be included, to-wit:

- (1) Petition for Writ of Habeas Corpus;
- (2) Order to Show Cause and Restraining Order Enjoining the deportation of petitioner from the United States, pending hearing;
- (3) Return of Honorable Commissioner of Immigration to the petitioner;
- (4) Clerk's record hearing upon Order to Show Cause denying Writ and staying proceedings 15 days pending appeal;
- (5) Petition for Appeal;
- (6) Assignment of Errors;
- (7) Order Allowing Appeal and Fixing Supersedeas Bond upon appeal;
- (8) Appeal and Supersedeas Bond;

(9) Order Enlarging Petitioner on bail and continuing restraining order in force pending appeal;

(10) Order Extending Time to file appellate record in the office of the clerk of the Circuit Court of Appeals 30 days from October 7, 1923;

(11) Order directing clerk to send original Department of Labor Record and file covering the deportation proceedings against petitioner to the clerk of the Circuit Court of Appeals in like manner as an original exhibit.

(12) Original waiver of citation on appeal to be sent by the clerk, copy to be included in transcript;

(13) Stipulation as to the appellate record;

(14) Clerk's certificate.

IT IS FURTHER STIPULATED that the caption of the Court and formal parts of the title to each of said papers may be omitted by the clerk and printer in the preparation of the said record upon appeal, and that the Court may make an order directing the transmission of the original Department of Labor record in said cause, which was filed with the Government's return to the petition in said cause, to the clerk of the Circuit Court of Appeals for the Ninth Circuit, and that said original record

and Department of Labor file covering the deportation proceedings against petitioner may be considered on appeal with the record in said cause in lieu of a copy thereof.

IT IS FURTHER STIPULATED that the original stipulation waiving issuance of formal citation may likewise be forwarded to the clerk of the Circuit Court of Appeals as part of the said transcript.

IN WITNESS WHEREOF the parties have hereunto set their hands this 22nd day of October, 1923.

WINTER S. MARTIN,
Attorney for Appellant.

THOS. P. REVELLE,
United States Attorney.

DeWOLFE EMORY,
Asst. U. S. Attorney.
Attorney for Respondent.

Indorsed

Filed in the

UNITED STATES DISTRICT COURT,
Western District of Washington,
Northern Division.

October 22, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

Waiver of Citation in Error

The parties hereto stipulate that citation to the defendant upon this appeal shall not be necessary in said above entitled cause, the United States agreeing hereby to waive the issuance of citation and service thereof.

The parties hereto further stipulate that the record in the above cause shall be filed and docketed in the office of the clerk of the above Court at San Francisco within thirty days from the date of this stipulation waiving citation; parties hereto agreeing that but for this stipulation citation would have been issued as of this said date.

IT IS FURTHER AGREED AND STIPULATED that whereas the Hon. Frank S. Dietrich fixed the amount of supersedeas in the above cause at Fifteen Hundred (\$1500.00) Dollars and decided that said petitioner should be enlarged pending this appeal upon said petitioner furnishing supersedeas in the sum of Fifteen Hundred (\$1500.00) Dollars with good and sufficient surety; and whereas said Frank S. Dietrich, judge of said Court, being willing that the said cause should be presented upon

appeal to the Circuit Court of Appeals, agreed to allow said appeal, the parties now stipulate that the Hon. Jeremiah Neterer, Judge of the United States District Court for the Western District of Washington sitting in the Northern Division thereof, may allow said appeal and may make all necessary and proper orders touching the matter of supersedeas, approving appeal and supersedeas bond and all other orders that may be necessary in the formal matter of suing out said appeal. The United States and Luther Weedin, Commissioner of Immigration hereby consenting to the allowance of said appeal by the Hon. Jeremiah Neterer, Judge of said Court.

WITNESS our hands at Seattle, Washington this 8th day of September, A. D. 1923.

WINTER S. MARTIN,
Attorney for Petitioner.

THOS. P. REVELLE,
United States Attorney.

DeWOLFE EMORY,
Asst. U. S. Attorney.
Attorneys for Responent.

Copy of within waiver received and due service of the same acknowledged this eighth day of September, 1923.

DeWOLFE EMORY,
Asst. U. S. Attorney.
Attorney for Plaintiff.

Indorsed
Filed in the
UNITED STATES DISTRICT COURT,
Western District of Washington,
Northern Division.

September 8, 1923.

F. M. HARSHBERGER, *Clerk.*

By S. E. LEITCH, *Deputy.*

**In the District Court of the United States, for
the Western District of Washington, North-
ern Division.**

No. 7800

IN THE MATTER OF THE APPLICATION OF
TANAKA MASENORI, ALIAS TANAKA MASA-
TOKU, A JAPANESE ALIEN, FOR A WRIT OF
HABEAS CORPUS

vs.

LUTHER WEEDIN, COMMISSIONER OF IM-
MIGRATION AT SEATTLE

**Certificate of Clerk U. S. District Court to
Transcript of Record**

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, clerk of the United States
District Court, for the Western District of Wash-
ington, do hereby certify the foregoing printed

pages numbered from 1 to 41, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above entitled cause, as is required by stipulation of counsel of record herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on appeal to the said Circuit Court of Appeals for the Ninth Circuit from the District Court of the United States for the Western District of Washington.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of counsel for petitioner, for making record, certificate or return, to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to-wit:

Clerk's fee (Sec. 828, R.S. U.S.), for	
making record certificate or return,	
71 folios at 15c -----	\$10.65
Certificate of clerk to transcript of	
record, four folios at 15c-----	.60
Seal to said certificate-----	.20
	<hr/>
	\$11.45

I hereby certify that the above cost for preparing and certifying record amounting to \$11.45, has been paid to me by counsel for petitioner.

I further certify that I hereto attach and herewith transmit the original Waiver of Citation by stipulation in this cause, together with original file and record of the Department of Labor, filed with respondent's return pursuant to order of Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 2nd day of November, 1923.

F. M. HARSHBERGER,

*Clerk United States District Court,
Western District of Washington.*